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ABSTRACT

Self-regulation, as defined by the National Advertising Division/National Advertising Review Board (NAD/NARB), is a process whereby the advertising industry regulates itself and turns to the federal government only if the system fails. The NAD/NARB system involves a two-step process: complaints are initially handled by the NAD and then are either adjudicated there or later appealed to the NARB. The NAD functions as the workhorse of the process, but handles only complaints involving truth and accuracy in national advertising. When the NARB is called upon to hear appeals, five-member panels are drawn from a 50-member pool. Although the system's prospects looked bright after its establishment in 1972, several legal scares rocked the system. Evaluation using 10 ground rules for evaluating international self-regulation of advertising and comments by critics and defenders indicate that the NAD/ NARB system has both succeeded and failed at its mission. The system is still functioning and has been able to handle its entire caseload, as yet without turning to the federal government. Diminishing public awareness and a lower caseload are thought by some observers, however, to suggest a bleak future for the system. (HTH)

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THE NAD/NARB SYSTEM: ADVERTISING SELF-REGULATION AT WORK

By ROBERT HAYS*

FREEDOM OF INFORMATION CENTER REPORT NO. 496

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SUMMARY: Self-regulation vs. government regulation has been an issue for some time. This report looks at one "self-regulator", the National Advertising Division/National Advertising Review Board and considers its process and its record since its establishment in 1971.

Consider the following scenario. The adjudicatory panel announced its decision. The appellant's argument was rejected. As a consequence, the lower ruling was affirmed. In a letter to the adjudicatory panel, appellant said it would abide by the decision-even though it was not satisfied.

Was this scenario from the annals of the U.S. Courts of Appeals? No, indeed this was not really a legal matter and the adjudicatory panel was no federal court. Rather, it was a panel of the National Advertising Review Board (NARB)-the high court, so to speak, of the advertising industry's self-regulatory process. This scenario, based in part on an actual panel hearing, is an example of self-regulation at work.[1]

This paper examines advertising self-regulation, specifically the National Advertising Division/National Advertising Review Board (NAD/NARB), as an example of self-regulation.

DEFINING SELF-REGULATION

If someone defined self-regulation as freedom from government intervention, such a definition would be basically accurate. Indeed the intention of self-regulation is just that—that the regulation of an industry be made by an industry, rather than by the federal government.

Is self-regulation only of benefit to an industry? It shouldn't be, for if only the industry benefits, what does this mean for consumers?

Perhaps the greatest benefit posed by self-regulation is that any necessary controls on a self-regulatory system's participants can be voluntary. That is, the enforcement of the self-regulation mechanism is not based on law, but on voluntary consent. However, this is where difficulties begin. After all, advertising self-regulation must have some means of enforcement or the system's participants have no way to ensure compliance with the system's mechanism(s). If there's no compliance, how can advertising excesses be prevented without resorting to the federal government?

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A chief problem in the United States has been the dilemma that self-regulatory participants face when their process is held to be in violation of antitrust laws. There is a fine line between a system that seeks to ensure voluntary compliance for the industry's gain and a system that seeks to restrain trade. After all, if self-regulatory systems in any way bring about collusion or restraint of trade, the federal government can move in-self-regulatory system or not. So it's very important that a self-regulatory system not violate antitrust laws.

Another definition of advertising self-regulation is now offered: self-regulation is a process whereby the advertising industry regulates itself and turns to the federal government only if the system fails.

TYPES OF ADVERTISING SELF-REGULATION

Advertising self-regulation can have many forms. The U.S. Department of Commerce listed four main types: 1) self-regulation through advertisers; 2) self-regulation by individual industries; 3) self-regulation by advertising trade associations; and 4) self-regulation by the advertising media.[2] Admittedly, classifying advertising self-regulation into several types is pure academic generalization. For as Eric Zanot wrote in a major work on advertising self-regulation, **The National Advertising Review Board: Premises, Precedents, and Performance**, such broad classifications are not historically accurate and obscure the development of various self-regulatory efforts.[3] While this may be true, the purpose of this paper is not to examine the detailed history of advertising self-regulation, but only to briefly mention generalized types for explanatory purposes.

Referring again to the various types of self-regulation, self-regulation by individual advertisers basically means the adoption and enforcement by an advertiser of specific codes or rules.[4] Self-regulation by individual industries, according to the Department of Commerce, also means adoption of codes of ethics.[5] Self-regulation by advertising agencies generally means that the agencies will police their own advertising out-

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put. Finally, media self-regulation means media outlets will adhere to guidelines or codes of ethics.

Another means to carry out self-regulation involves the concept of the advertising review board, which may or may not be subsumed under the other types. The review board is essentially an arm of an industry which works to self-regulate that industry. A current example is the NARB, which will be examined in this paper.

It should be noted that other industries, such as the newspaper industry, offer their own means of self-regulation. Such means include (1) op-ed pages, (2) ombudsmen, and (3) press and editorial councils.[6] The point being, that each industry is likely to have its own means to achieve self-regulation, just as the advertising industry seems to rely heavily on the NAD-/NARB.

NAD/NARB'S PREDECESSOR-INTERCHANGE

The history of advertising self-regulation in the United States is a rich one and is well documented in works such as Zanot's doctoral dissertation. However, this paper looks into history only to emphasize the NAD/NARB's immediate predecessor-Interchange. Interchange is mentioned here for two reasons: (1) it was NAD/NARB's immediate predecessor; and (2) it's an example of advertising self-regulation that did not work.

Amid the rising consumer movement of the 1960s, the advertising industry tried to establish a self-regulatory mechanism. This system was called Interchange and was funded by the American Association of Advertising Agencies and the Association of National Advertisers to review advertising complaints.[7] Made up of "10 advertisers and 10 agency people," Interchange was intended to handle "complaints dealing with matters of opinion and taste not covered by law."[8]

Interchange's function was to determine whether an advertisement needed correction while enforcement was to be handled by the AAAA and ANA, which were to use "whatever persuasion they could exercise."[9] However, Interchange faded away after it "did little regulating."[10] Its relative insignificance is noted by Eric Zanot who wrote that: "no new significant self-regulatory machinery was instituted by advertisers and/or advertising agencies from 1955 until the inception of the National Advertising Review Board in 1971."[11] Interestingly, Zanot did not even mention Interchange.

With the consumer movement gaining strength in the late 1970s, the advertising industry moved quickly to establish another self-regulatory mechanism. Various proposals were considered and in 1971, the NAD/NARB system was funded.

THE SYSTEM ITSELF

The NAD/NARB system involves a two-step process of self-regulation. Complaints are initially handled by the NAD and are either adjudicated there en toto, or are later appealed to the NARB. While NAD/NARB are the chief elements of the system, three other organizations are part of the system: 1) the National Advertising Review Council (NARC); 2) the Children's Advertising Review Unit (CARU); and 3) the Local Advertising Review Boards (LARB).

The NARC acts as an advisory committee for the self-regulatory process.[12] Originally labeled the National Advertising Advisory Committee, NARC functions to "recommend staff members and elect members of NARB."[13] The membership of the NARC consists of the presidents and chairmen of the American Association of Advertising Agencies, the American Advertising Federation, the Association of National Advertisers and the Council of Better Business Bureaus.[14] In essence, the NARC is the apex organization of the self-regulatory system. NARC is only a figurehead observer though, as far as the daily self-regulating is concerned. An official NARB document makes it crystal clear:

"No member of the NARC Board of Directors, while so serving, shall be eligible to be a member or alternate member of the NARB."[15]

The NAD functions as the workhorse of the self-regulatory process. The NAD is a part of the Council of Better Business Bureaus and operates out of the CBBB's New York offices. Initially, funding came completely from the CBBB but over the years NAD's income base has expanded. Today financial support comes from advertising agencies, the Children's Advertising Review Unit supporters and the CBBB.[16]

The NAD does not handle just any advertising complaint. Complaints must concern truth and accuracy. This is somewhat a restriction, for advertising can involve other matters, such as taste and decency. But from the inception, NAD was established for:

"receiving or initiating, evaluating, investigating, analyzing, and holding initial negotiations with an advertiser on complaints or questions from any source involving the truth or accuracy of national advertising."[17]

Other restrictions exist. For example, all complaints must involve national advertising. As defined in a recent NARB publication, "National advertising originates with businesses selling goods or services on a national or broad regional basis."[18] And if these restrictions listed aren't enough, five other considerations exist which will preclude NAD's review:

1) Local advertising or business practices;
2) Questions related to basic performance, label claims and directions, matters of taste and political and issue advertising;
3) Advertising addressed to a select audience with specialized knowledge of the subject matter;
4) Where possible unlawful business practices are at issue or the advertiser belongs to the minority unresponsive to self-regulation; and
5) When the matter is the subject of litigation by a government agency.[19] As to why such restrictions exist, the NAD says there are two chief reasons: 1) NAD has limited resources; and 2) other avenues exist for resolving the matter such as through an "informal query to the advertiser."[20]

Apparently there are no restrictions on who may submit a case for review, however. Advertisers and nonadvertisers are welcome. A 1983 CBBB's report reveals the following breakdown of just who or what organizations complain to NAD:

"Cases derive from (1) competitors (42 percent); NAD monitoring of television, radio and the print media (37 percent); local BBBs (11 percent); consumers (5 percent); and others (5 percent)."[21]

What happens once a complaint is accepted by NAD? The NAD will grant an initial review to determine if the complaint warrants an investigation. If the NAD staff finds that the advertisement's claims may be questionable, the advertiser responsible is contacted. It should be noted that any complaint

must "state clearly the reason for...complaint with any substantiation you can provide."[22]

After being contacted by the NAD, the advertiser is asked to provide substantiation for claims made in the advertisement.[23] The NAD then considers the complaint with substantiation, if any, and the advertiser's substantiation, if any. The NAD may also call on outside experts to help in such matters.[24]

The NAD must then decide if the advertisement under investigation is adequately substantiated. If there is insufficient support for any or all claims made, NAD contacts the advertiser and asks that the advertisement be modified. The NAD asks, and doesn't require modification. Such a requirement could border on restraint of trade.

The advertiser then has the option of modifying the advertisement or appealing the NAD ruling to the NARB. Advertisers have 10 days to appeal. If the advertiser chooses not to revise, drop the ad or appeal, the NAD can notify the chairman of NARB. If the chairman concurs that the ad is not written to adhere to the self-regulatory standards, "he shall return...to NAD with the request that NAD file a complaint with an appropriate law enforcement agency."[25] Such an enforcement step has yet to be taken.[26]

While government referral is indeed a threat, the NARB Statement of Organization reveals that:

"No public disclosure shall be made of referral to a law enforcement agency in cases in which the advertiser has not participated in the NAD/NARB self-regulatory process."[27]

The next organization to be considered is the Children's Advertising Review Unit (CARU). CARU operates under the jurisdiction of the NAD. CARU was established in 1974 "to assure the truth, accuracy and fairness of advertising directed to children."[28] CARU uses specific guidelines in its investigation of children's advertising.[29] The following passage is an excerpt from the guidelines:

"Advertisers should always take into account the level of knowledge, sophistication and maturity of the audience to which their message is primarily directed. Younger children have a limited capability for evaluating the credibility of what they watch. Advertisers, therefore, have a special responsibility to protect children from their own susceptibilities."[30]

A recent NAD publication reveals that three chief questions have raised the concern of the CARU staff:

"Product Presentations: Restraint is required so as not to exploit children's imagination through misleading copy, sound and visual effects.

Adequacy of Disclosures: Necessary information and disclaimers need to be conveyed in ways that are understandable to children, taking into account their limited vocabulary and less developed consumer skills.

Safety: Awareness that imitation and experimentation are important activities to children is essential. They may imitate product demonstrations and other actions without regard to risk."[31]

Also assisting the CARU staff is a special panel of seven academic advisors, who are specialists with children. As a CARU publication states, the advisors' backgrounds include "child psychology, the behavioral sciences and nutrition..."[32] This panel also offers its expertise when the guidelines are revised.

As for enforcement, CARU relies on voluntary cooperation by advertisers with its rulings.[33] CARU monitors print and broadcast advertising and reviews "advertisements provided voluntarily by advertisers."[34]

The next organization to be considered is the NARB. The NARB exists as a panel of last resort for disappointed advertisers, complainants and the NAD. It's the NARB which must act not only as the final arbiter, but also as the enforcer.[35] For if advertisers do not cooperate with the self-regulatory process, the NARB is expected to contact appropriate government agencies. The federal government would have the last word, if an NARB ruling is ever rejected. Numerous government agencies could be involved, including the Federal Trade Commission, the Federal Communications Commission and the Food and Drug Administration, to name a few.

The NARB consists of 50 people drawn from advertising agencies, advertisers and the general public. The members' ratio is as follows:

"30 advertisers, 10 prominent agency executives (with 10 agency alternatives) and 10 public members, public members being defined as 'non-industry' persons who have a record of achievement in the public interest."[36]

Special arrangements are made for compensating some panel members:

"Advertiser and advertising agency members and alternates of the NARB shall receive no salary. Nonindustry members shall receive per diem compensation in such amount as shall be determined by the NARC Board of Directors and shall be entitled to reimbursement for such out-of-pocket expenses as they shall incur in connection with the performance of their duties on the NARB."[37]

When the NARB is called upon to hear appeals, five-member panels are constituted from the 50-member pool. The ratio of the panels is identical with that of the total pool, i.e., one panelist is from an advertising agency, another is a public member and three are from advertisers. The NARB stresses that every effort is made to prevent any potential conflict of interest in panel selection.[38] Provision is even made for situations in which an unbiased panel cannot be formed. In such cases, the NARB Chairman can appoint alternates.[39] To be sure, there was some clamor in the early days when some critics said the ratio was too heavily stacked in favor of the advertising industry.[40] Interestingly, the consumer organizations' initial negativeness seemed to be assuaged, especially as the system decided increasingly for advertising modifications.

Once called to action, an NARB panel considers both the material submitted by NAD to the advertiser and the material submitted by the advertiser to the NAD.[41] As the NARB Procedures state, each panel

"will meet at the call of its Chairman, who will preside over its meetings, hearings and deliberations. A majority of the panel will constitute a quorum, but the concurring vote of three members is required to decide any substantive question before the panel."[42]

If "previously unavailable evidence" is submitted to the NARB panel, the case will be handed back to NAD for reconsideration.[43] Finally, NARB's decision is binding on NAD-whatever the outcome.[44]

While NARB concerns itself with matters of truth and accuracy, special consultive panels can be formed to consider other matters. As the NARB Procedures state, such matters

"should be broadly applicable or involve te hniques or concepts in frequent use. Complaints addressed to very limited kinds of advertising or involving idiosyncratic concepts shall not be processed."[45]

The Guidelines also allow for external consultation:

"Consultive panels shall review all matters referred to them by the Chairman and may consult other sources to develop data to assist in the evaluation of the broad questions under consideration. No formal inquiry should be directed to advertisers nor should the individual complainant be contacted."[46]

As for NARB funding, its arrangement is similar to that of NAD. Support funding comes from advertising agencies and CBBB support.[47]

A final element of the advertising industry's chief self-regulatory system involves the Local Advertising Review Boards (LARBs). LARBs are modeled after the NARB, but function purely at the local level. An NARB official recently put the number of LARBs at 24.[48] While NARB officials apparently hoped for a proliferation of LARBs, this has not occured. Apparently two chief reasons explain why: 1) insufficient local funding; and 2) a federal court case which nearly wrecked the LARBs' very existence.

In sum, the NARC, the NAD, CARU, NARB and the LARBs make up the advertising industry's chief self-regulatory system. Like the history of advertising self-regulation in the United States, the NAD/NARB system has not had it easy. During its formulative period, critics blasted the entire system. Apparently, some critics felt the system, similar to its predecessor-Interchange, would merely fade away. For example, Ralph Nader said the NARB couldn't be relied upon due to:

"1) insufficient enforcement power; 2) inadequate right of appeal for the public; 3) reluctance to publicize facts and refer questions to the government; 4) tendency to steer clea. of situations which may involve private or government litigation; and 5) inadequate testing facilities."[49]

Another Nader associate, Mrs. Aileen Adams Cowan, said that "there is a considerable amount of accumulated evidence indicating self-regulation will not work."[50] The criticism continued, but the system was still put into place

Even after its establishment, the NAD/NARB system was bombarded with criticism and numerous test cases. For example, Thomas Ryan, Jr. of the Missouri Public Interest Research Group submitted 52 cases. Ryan later said that every NAD-/NARB decision was adverse.[51] Consumerist Erma Angevine of the Consumer Federation of America, submitted 27 test complaints and a former Nader associate, Mark Silbergeld, submitted an additional 10 test cases.[52] While most of the early consumer test cases were dismissed, their dismissal was often because they had little or nothing to do with deception.[53] Over time the criteria for complaint submission became more well known and errant submissions decreased.

Growing pains continued, but as the years passed, criticism seemed to lessen. The system's prospects looked bright. But several legal scares shook the system to its foundation.

LEGAL SCARES

The first major legal test came in 1974 in Denver, Colorado. The case involved a suit by a franchiser and an advertiser against another advertiser, the LARB, the local BBB and nine individuals.[54] Basically, the suit alleged:

"violation of civil rights law, the Fourteenth Amendment and antitrust laws and charged that self-regulatory procedures violated the due process that would be guaranteed if the case were the subject of governmental action."[55]

The situation worsened when the LARB's insurance company charged its coverage and "cancelled coverage for all local review boards."[56]

The federal district court handling the suit eventually dismissed it and an appeal was rejected. Apparently though, some damage had been done. For the planned proliferation of LARBs seemed to be stifled and never really took off.

The second legal fright came about in 1976 when all members of an NARB panel were threatened with lawsuits by an advertiser. The NARB panel "adjourned to await additional data from the government," and while adjourned, learned that the Postal Service had filed a complaint against the advertiser.[57] Faced with possible prosecution, the advertiser "signed a document promising to make no such claims again, whereupon the NARB panel termed the matter 'moot' and dismissed the case."[58]

A third legal scare occured later in 1976 "when the FTC announced an investigation to see if self-regulation was discouraging comparative advertising."[59] As it turned out, an FTC memo leaked to the press revealing that the target of the probe was not the NAD/NARB. Instead, the probe was after media acceptance policies and advertising restrictions imposed by professional associations.[60]

The fourth legal scare occurred when a federal district judge held the National Association of Broadcasters' code to be in restraint of trade.[61] Three NAB code provisions were questioned: 1) time standards; 2) program interruption standards; and 3) multiple product announcement standards.[62] What could have been the difference was that the NAB code allowed "barring (of) certain products and services from being advertised on television."[63] And the NAD/NARB process is voluntary, involving no enforced barring of allegedly deceptive or misleading advertisements. Interestingly, in spite of the possible ramifications, NARB Administrative Assistant Irene O'Connor said in 1983 that this court case had "no impact" on the NARB.[64]

In sum, the NAD/NARB system has survived several legal scares and witnessed one self-regulatory code rejected by the courts. Whether or not it can survive other legal challenges remains to be seen.

THE SYSTEM AT WORK

Actions generally speak louder than words. Likewise, a look at several actual advertising complaints handled by the NAD/NARB system could be illustrative of the advertising self-regulation process at work.

An August 1983 case concerned a claim made by a car rental firm. Below is the NAD write-up:

Basis of Inquiry: Newspaper advertising claimed: "Chances are you'll never need it. But if you do, only National

gives you access to 24-hour road service motor club." The American Automobile Association challenged the claim of "world's largest," whether measured by numbers of contract garages, clubs and branch offices, membership or member services.

Advertiser's Response: The advertiser provided a copy of an advertising checklist, prepared for internal use in December 1982, to demonstrate it was its regular practice to refer to the Amoco Motor Club as "one of the world's largest full service motor clubs with over 6,500 service facilities across the U.S." It was explained that the qualifying words "one of" were omitted from the advertisement in question. The oversight has been corrected for future advertising.[65]

As the NAD Case Report notes, this is an example of advertising modified due to the effort of the self-regulatory process.

A January 1983 NAD Case Report offered the following example of an advertisement approved by the NAD:

Basis of Inquiry: Print advertising claimed: "You see more and more people enjoying Puerto Rican White Rum in place of gin and vodka..By law every drop of our rum is aged at least one full year...That's why Puerto Rican White Rum makes decidedly smoother, better tasting drinks and that's why everybody's switching."

Advertiser's Response: The advertiser provided independent trade statistics showing that, since 1975, Puerto Rican rums have experienced a considerably faster rate of growth in sales and share of the distilled spirits market than gin or vodka. Additional independent research was submitted indicating part of the increase in sales was attributable to former gin and vodka drinkers. Rum is increasingly consumed in mixed drinks traditionally associated with vodka or gin.

As to taste and smoothness, the advertiser indicated Puerto Rican rum is aged at least one year by law while vodka and gin are not aged at all. In a blind taste test rum was rated over gin and vodka for smoothness.

NAD concluded the claims were substantiated.[66]

In 1979, the NARB reversed a NAD decision in a case involving roll-on deodorants against sprays. The following passages are excerpts from the NARB press release about the decision:

"New York, October 29, 1979–Advertising by Bristol-Myers Company comparing the efficacy of Ban Roll-On antiperspirant against 'Secret,' 'Sure' and other aerosols has been found not deceptive by a panel of the National Advertisng Review Board. The panel's decision, in response to an appeal from the National Advertising Division, reverses a previous finding by the NAD that the television commercials in question could be misleading to the consumer.

The NARB panel disagreed with the NAD opinion that an advertiser who chooses to compare unequal types (i.e., Ban Roll-On against competitive brands' sprays) assumes the burden of disclosing all the facts concerning the comparison, including the fact that the named competitor makes a roll-on as well....

Rather than being misled, the panel feels that the consumer may benefit from advertising pointing out the superiority of roll-ons to spray and suggests that the Ban Roll-On comparative advertising accomplishes this to some extent."[67]

In a more recent ruling, 1983, an NARB panel convened to hear an appeal by American Cyanamid Company. NAD ruled for Cyanamid's competitor, Proctor & Gamble's "Top Job," and was substantiated.[68] American Cynamid felt the Proctor & Gambel advertisement falsely disparaged its competitive product, "Pine-Sol."[69] The NARB panel had this to say:

"The evidence clearly established that Top Job is superior on tough grease when mixed with water. The complainant does not dispute this. We also fail to find any false disparagement of Pine-sol through the use of this claim in the context of the commercial."[70]

It could prove more illustrative to present summaries of two Children's Advertising Review Unit's rulings:

"General Mills/Kenner Products
'Star Wars' Action Figures
Grey Advertising Inc.

Basis of Inquiry: An advertisement in a children's magazine for 'Star Wars' action figures pictured a number of figures and stated: 'Lo you dare recreate all the adventure!' The Children's Advertising Review Unit (CARU) questioned the absence of a guide to the actual size of the figures, as well as whether the figures were a set or required separate purchases.

Resolution: Although the advertiser maintained the belief that the figures are so well known that children are aware of size and availability, it acknowledged CARU's concerns and agreed to modify the advertisement to include size and purchase requirements.[71]

Tomy Corporation
Scramble Hand Video Game
Sachs, Finley & Company

Basis of Inquiry: Television advertising appearing during children's cartoons contained a superimposure indicating the need for separate battery purchase. The Children's Advertising Review Unit (CARU) questioned the absence of an accompanying audio statement to increase children's comprehension of this information.

Advertiser's Response: The advertiser explained the commercial was intended for adult audiences and scheduled to be shown during broadly defined time segments. To avoid occasional placement during children's programs, it will revise its adult commercial scheduling to more specific time periods. Additionally, it has agreed to modify the advertising to include an accompanying audio message on the requirement for batteries.[72]

The cases and excerpts cited above in no way reflect any trend in the NAD/NARB process. Instead, those cases selected were chosen only as examples of the NAD/NARB system at work.

HOW IT IS DOING

This section takes a look at the NAD/NARB system in an effort to determine how it's faring. Relevant data will be considered as

will an external list of factors to judge NAD/NARB's success. Data to be considered include breakdowns of NAD/NARB decisions while the external factors are from an international study of advertising self-regulation.

For 1972, NAD/NARB's first year of existence, data showed:

"that NAD, since its inception, had received or initiated 44 complaints, of which 131 were dismissed and 84 upheld. There were 227 cases still under investigation...."[73]

A 1976 summary revealed the extent of the NAD/NARB's caseload over a five-year period:

"...the total number of complaints processed had reached 1,054, of which 364 (35 percent of all complaints initiated) had been dismissed because of adequate substantiation, 345 (33 percent) resulted in modification or discontinuance, 278 (26 percent) were administratively closed, 12 (1 percent) were referred by NAD to NARB because of breakdowns in negotiation and 55 (5 percent) were pending disposition."[74]

A 1984 NAD release showed the following breakdown of cases:

Decisions	1983 #	1983 %	1982 #	1982 %
Substantiated	46	42	61	44
Modified/Discontinued	64	58	79	56
Referred to NARB	—	—	—	—
Total	110	100%	140	100%[75]

As for cumulative self-regulation, three additional sets of data are now offered. First, is a breakdown of cumulative NAD decisions:

NAD Decisions	7/71—6/83 Cumulative #	%
Substantiated	834	47
Modified/Discontinued	907	52
Appealed to NARB	15	1
Suspended	1	—
Total	1,757	100[76]

The second breakdown now presented is for cumulative NARB decisions:

NARB DECISIONS AT MAY 31, 1984[77]

Total No. of Appeals Handled	NAD Decision Upheld	Reversed/ Modified	Dismissed without Prejudice
38	26	8	4
Appeals Pending			0

MAY ACTION:

1) Request for Appeal by Complainant, Chairman's Decision pending
2) Panel #39 dismissed upon advertiser's agreement to discontinue disputed claims.

Analyzing the data just presented, it can be seen that the caseload has decreased over the years-140 cases were handled in 1982 compared with 444 in 1972. Another revealing point is that there were no referrals to NARB in 1982 and only one in 1983. Perhaps this is one reason that consumer activist Thomas Ryan Jr. asked during a telephone conversation if NARB still existed:[78]

As for the total of NARB, 38, cases that were acted upon during the course of NARB's existence, it does seem like a small number. It seems especially small compared to the cumulative number of NAD cases — 1,863, as of 5/31/84.

Some consumer activists who originally peppered the NAD/NARB with test cases, haven't really muffled their complaints. Former Consumer Federation of America (CFA) Director Erma Angevine recalled recently that of all the initial complaints brought to the NAD, "not one of them was considered."[79] When asked what she had heard about NAD/NARB in recent years, she replied , "I have not heard anything about them for years."[80]

Ralph Nader, who also looked with a critical eye at NAD/NARB in its early years, said recently that NARB has "modestly helped to raise advertising standards."[81]

Another consumer activist, Thomas Ryan, Jr. of the Missouri Public Interest Research Group, said recently that NAD/NARB "only has visibility in the advertising community."[82] Ryan suggested that the NAD/NARB issue public service ads.[83] Ostensibly, this could raise the system's level of visibility among the general public. Interestingly, Ryan argued that self-regulation as a "...concept is still workable but is not managed properly."[84]

There is another way to evaluate NAD/NARB's work. Albert Stridsberg's 10 ground rules for evaluating international self-regulating of advertising seem particularly relevant.[85] Admittedly, this is not a scientific measurement, but only a method to compare NAD/NARB's actions with those laid out in the International Advertising Association's 1974 study. The 10 ground rules are:

#(1) Involvement of and liaison with all possible interested parties, creating a real exchange of ideas and a sense of participation.

While this was a problem in the early months, over time consumers, advertisers and advertising agency officials seem to have become actively involved.

#(2) Development of a positive identity for the self-regulatory effort, rather than a purely defensive posture.

Stanley Cohen, Washington Editor for **Advertising Age**, said in 1972 that the NAD's initial efforts to keep the hearings and rulings secret "shields incompetence and nonperformance."[86] As more NAD and NARB cases leaked to the press, it was announced in 1972 that the system would publicize all NARB decisions.[87]

#(3) Establish firm commitment on the part of all participants-whether associations or individual firms-expressed generally in writing, defining their financial involvements.

If this test calls for announced support from all participants, then this has generally been achieved. Support from the leading advertising associations came early on and consumers and government officials seemed to become more supportive over the years. As for financial support, support from advertising agencies has increased from $74,975 in 1971 to $237,463 in 1982.[88]

#(4) Define areas of responsibility and clear-cut structures, whether these involve permanent staffs or volunteer committees.

This requirement seems to have been met by the NAD/NARB system. Both NAD and NARB have permanent staffs as does

CARU. In addition, the NARB five-member panels are voluntary.

#(5) Ensure pilot testing of the proposed self-regulation procedures, before exposing them to the public.

The NAD/NARB did not have a honeymoon, so to speak. It was hit with test cases and criticism before it even had time to engage in pilot testing.

#(6) Ensure public launch procedures, so to effectively establish the self-regulatory organization in the minds of the advertising industry and the public.

Whether or not the NAD/NARB system achieved this is unclear. The AAAA president, John Crichton, revealed the system before a closed business session of the AAAA in May of 1971.[89] Crichton's remarks were leaked to **Advertising Age** and published. In addition, the AAF chairman officially announced the planned organization's formation at a CBBB meeting in May of 1971.[90]

#(7) Achieve constant effort to establish and maintain a clear reputation for independence from special interests.

The system has attempted to achieve freedom from special interests by appointing panels that include nonadvertisers. As mentioned earlier NARC members cannot serve on panels (functioning panels) of the NARB for the adjudication of cases.

#(8) Establish clear-cut time frames and activity cycles, established through formalized plans and written schedules.

The NAD/NARB system has staffing which functions on a daily basis, while NARB also has panels which function when needed. But no clear-cut time frames seem to exist.

#(9) Establish policies and procedures designed to anticipate impending problems.

Whether or not long-range planning occurs, is not clear. If such planning does occur, it is likely to occur via the NARC.

#(10) Establish a structured communication program to reach audiences outside the advertising industry.

The NAD/NARB system does ensure that reports are published monthly. However, whether the nonadvertising public is interested enough to read the reports is unclear. An NARB staff member admitted over the telephone that she was unaware of any studies made to identify the public's awareness of the NAD/NARB system.[91]

These ground rules may or may not be an effective method for comparing self-regulation efforts. They are, however, another method for evaluating the system.

One additional voice not yet considered is that of the Federal Trade Commission (FTC). After all, according to one official source, it's the FTC which must handle advertising complaints that elude the NAD/NARB system, even though the NAD/NARB's caseload may be decreasing. He added, "we're (FTC) pretty busy."[92] The source did, however, have something positive to say, " I have read their reports and their efforts are a good one."[93]

SUMMARY AND CONCLUSION

This paper has examined advertising self-regulation, specifically the NAD/NARB system in the United States. This system is not perfect, for some advertisers apparently ignore it. However, these advertisers, (often said to be small in number), are referred to as the "fly by night types" who are "not amenable to self-regulation."[94] While the complaint caseload has diminished, advertising agency financial support has not. According to a 1983 CBBB publication, advertising agency support has increased from $74,975 in 1971 to $237,463 in 1982.[95] And even some critics have become supportive of the system. For example, **Advertising Age** Editor Stanley Cohen, a former critic, said in 1980 that "NARB has a remarkable record of moving faster, more decisively and with less acrimony and expense than FTC...."[96] But not all former critics have changed their tune. As Ralph Nader said, the NARB has "modestly helped to raise advertising standards."[97]

One might ask though-has the system succeeded? Answering such a question is no simple task. At least two answers might be posited. First, that the NAD/NARB has succeeded. Second, that it has failed.

As for the system's defenders, they might argue success, in light of the decreasing caseload. Such an argument holds some water, for if the advertising industry has come to respect NAD/NARB, then perhaps that's why fewer cases are brought. On the other hand, some might argue that if the system were working, why aren't more cases brought to it?

Defenders of the system can also argue that since no advertising complaint has ever gone beyond the NARB, self-regulation has succeeded. After all, if advertising complaints were to go from the NAD/NARB process to the federal government, wouldn't the self-regulatory process have been defeated?

Critics, on the other hand, might argue that in light of a decreasing number of advertising complaints, a seldom-used NARB coupled with little publicity, signify that the system is failing. If the NAD/NARB would counter such criticism with more publicity, perhaps doubts of its efforts and effectiveness would be lessened, if not ended. As Thomas Ryan, Jr. said, public service ads might be helpful.[98]

In conclusion, the National Advertising Division/National Advertising Review Board self-regulatory system is still functioning. Not only is the system still extant, but it has been able to handle all cases brought to it. More specifically, it has not yet had to turn to the federal government for help. If more self-regulatory systems in other industries could build such a system, the onus of excessive regulations might diminish.

That the NAD/NARB system has survived since 1971 has no doubt left many critics surprised. A 1973 study of the NARB described it as an "Impossible Dream."[99] Its outlook and predictions seemed gloomy. Some 11 years later it would be difficult to find an informed observer who would still say that the NAD/NARB system is an impossible dream.

FOOTNOTES

1. Press release issued by the National Advertising Review Board, New York, December 1, 1975.
2. **Self-Regulation in Advertising**, (Washington: U.S. Department of Commerce, U.S. Government Printing Office, 1965), p. 10.
3. Eric J. Zanot, "The National Advertising Review Board: Premises, Precedents, and Performance" (Unpublished Ph. D. thesis, University of Illinois at Urbana-Champaign, 1977), p. 22.
4. U.S. Department of Commerce, **Self-Regulation in Advertising**, p. 10.
5. Ibid., p. 11.
6. Paul Fisher, lecture at the University of Missouri School of Journalism, October 19, 1983.
7. Tim McGraw, "NARB: Impossible Dream?," **Freedom of Information Center Report** No. 300 (School of Journalism, University of Missouri-Columbia, March 1973), p. 1.
8. Ibid.
9. Ibid.
10. Ibid.
11. Zanot, op. cit., p. 46.
12. Eric J. Zanot, "The National Advertising Review Board, 1971-1976," **Journalism Monographs** (Lexington, Kentucky: Association for Education in Journalism, February 1979), p. 11.
13. Ibid.
14. Ibid.
15. Statement of Organization and Procedures of the National Advertising Review Board (As Amended to June 19, 1980), p. 1.
16. **1982 Annual Report** (Arlington, Virginia: Council of Better Business Bureaus, Inc., 1982), p. 5.
17. Statement of Organization and Procedures, **op. cit.**, p. 4.
18. **If You Have a Complaint About Advertising . . .**, A pamphlet published by the National Advertising Review Board.
19. "Self-Regulation of National Advertising Twelfth Year-End Report," **NAD Case Report** Vol. 13 No. 6, New York: Council of Better Business Bureaus, Inc., July 15, 1983, pp. 20-21.
20. Ibid., p. 20.
21. **1983 Annual Report**, Arlington, Virginia: Council of Better Business Bureaus, Inc., 1983, p. 5.
22. **If You Have a Complaint About Advertising . . .**
23. Ibid.
24. Ibid.
25. Statement of Organization and Procedures, **op. cit.**, p. 6.
26. Telephone interview with Irene O'Connor, Administrative Assistant-NARB, July 5, 1984.
27. Statement of Organization and Procedures, op. cit., p. 6.
28. "An Eye On Children's Advertising," a pamphlet published by National Advertising Division, Council of Better Business Bureaus, Inc.
29. Ibid.
30. **Self-Regulatory Guidelines for Children's Advertising**, (New York: Children's Advertising Review Unit, Council of Better Business Bureaus, Inc., 1983), p. 4.
31. "Self-Regulation of National Advertising . . ." p. 21.
32. "An Eye on Children's Advertising," p. 5.
33. **Self-Regulatory Guidelines for Children's Advertising**, op. cit., p. 10.
34. "An Eye On Children's Advertising," op. cit., p. 2.
35. "If You Have a Complaint About Advertising . . .," op. cit., p. 5.
36. Zanot, "The National Advertising Review Board, 1971-1976," pp. 9-11.
37. Statement of Organization and Procedures, op. cit., p. 2.
38. McGraw, op. cit., p. 3.
39. Statement of Organization and Procedures, op. cit., p. 7.
40. McGraw, op. cit., p. 4.
41. "Dear ***, Your Advertising has recently come to the attention of the National Advertising Division . . ." a pamphlet published by the NAD, Council of Better Business Bureaus, Inc., New York, 1981.
42. Statement of Organization and Procedures, op. cit., p. 7.
43. "Dear ***, Your Advertising has recently come to . . ." p. 5.
44. Ibid.
45. Statement of organization and Procedures, op. cit., p. 10.
46. Ibid., p. 11.
47. **1982 Annual Report**, op. cit., p. 5.
48. Telephone interview with Irene O'Connor, Administrative Assistant-NARB, July 9, 1984.
49. Cited in McGraw, op. cit., p. 51.
50. Ibid., p. 3.
51. Ibid., p. 6.
52. Zanot, "The National Advertising Review Board, 1971-1976," pp. 15-16.
53. Ibid., p. 20.
54. Ibid., p. 28.
55. Ibid.
56. Ibid., p. 29.
57. Ibid., p. 32.
58. Ibid.
59. Ibid., p. 54.
60. Ibid.
61. **United States of America v. National Association of Broadcasters**, 536 F. Supp. 149 (1982).
62. Mel Firedman, "Who Killed the NAB Code?" **Madison Avenue**, July 1982, p. 44.
63. Ibid., p. 46.
64. Telephone interview with Irene O'Connor, December 5, 1983.
65. "Public Report of National Advertiser Participation in the NAD/NARB Self-Regulatory Process Established by Business," **NAD Case Report** Vol. 13, No. 7, New York, August 15, 1983, p. 26.
66. "Public Report of National Advertiser Participation in the NAD/NARB Self-Regulatory Process Established by Business," **NAD Case Report** Vol. 12, No. 12, New York, January 17, 1983, p. 45.
67. Press release issued by NARB, October 29, 1979, pp. 1-2.
68. **Report of NARB Panel 38**, New York 16, 1983, pp. 2-4.
69. Ibid.
70. Ibid.
71. "Public Report of National Advertiser Participation in the NAD/NARB Self-Regulatory Process Established by Business," **NAD Case Report** Vol. 13, No. 8, New York, September 15, 1983, p. 30.
72. "Public Report of National Advertiser Participation in the NAD/NARB Self-Regulatory Process Established by Business," **NAD Case Report** Vol. 13, No. 1, New York, February 15, 1983, p. 3.
73. Zanot, "The National Advertising Review Board, 1971-1976," p. 20.
74. Ibid., p. 33.
75. "Public Report of National Advertiser Participation in the NAD/NARB Self-Regulatory Process Established by Business," **NAD Case Report** Vol. 13, No. 12, New York, January 16, 1984, p. 43.
76. **Self-Regulation of National Advertising . . .** op. cit., p. 22.
77. **NAD/NARB Case Report Status** (New York: NARB, May 31, 1984), p. 1.
78. Telephone interview with Thomas Ryan, Jr., of Missouri Public Interest Research Group, November 17, 1983.
79. Telephone interview with Erma Angevine, former Executive Director of the Consumer Federation of America, July 2, 1984.
80. Ibid.
81. Telephone interview with Ralph Nader's Center for the Study of Responsive Law, July 9, 1984.
82. Telephone interview with Thomas Ryan, Jr., July 9, 1984.
83. Ibid.
84. Ibid.
85. Albert B. Stridsberg, **Effective Advertising Self-Regulation: A Survey of Current World Practice and Analysis of International Patterns** (New York: International Advertising Association, Inc., 1974), pp. 21-24.
86. Stanley Cohen, "Consumerists Feel Self Regulation Ad Program Is Not Getting Results," quoted in Eric Zanot, "The National Advertising Review Board, 1971-1976," p. 14.
87. Ibid., p. 20.
88. **1982 Annual Report**, op. cit., p. 5.
89. Zanot, "National Advertising Review Board, 1971-1976," p. 9.
90. Ibid.
91. Telephone interview with Irene O'Connor, NARB, December 5, 1983.
92. Telephone interview with an official source at the Federal Trade Commission, July 20, 1984.
93. Ibid.
94. Telephone interview with Irene O'Connor, NARB, December 5, 1983.
95. **1982 Annual Report**, op. cit., p. 5.
96. Stanley Cohen, "What's Fair for 'fairness'?" **Advertising Age**, April 7, 1980, p. 22.
97. Telephone interview with Ralph Nader's staff, July 9, 1984.
98. Telephone interview with Thomas Ryan, Jr., July 9, 1984.
99. McGraw, op. cit., p. 6.

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